

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE ELECTRONIC APPLICATION OF)	
TAYLOR COUNTY RURAL ELECTRIC)	Case No. 2023-000147
COOPERATIVE CORPORATION FOR)	
A GENERAL ADJUSTMENT OF RATES)	

POST HEARING RESPONSE BRIEF

Comes now, Taylor County Rural Electric Cooperative Corporation (“Taylor County” or the “Company”), by counsel, pursuant to the Kentucky Public Service Commission’s (“Commission”) October 30, 2023 Order in this proceeding setting forth the post-hearing procedural schedule and the deadline for submitting a post-hearing response brief in support of its position in this matter, and respectfully states as follows:

I. INTRODUCTION

Taylor County filed its Notice of Intent to file this rate proceeding on May 1, 2023. Taylor County filed its Application on June 6, 2023. The Attorney General’s Office of Rate Intervention (“AG”) was granted intervention on June 6, 2023. The Commission entered an Order on June 15, 2023 suspending the rates proposed by Taylor County until December 6, 2023. Taylor County responded to four rounds of discovery from Commission Staff and two rounds of discovery from the AG. The AG filed its Direct Testimony on August 18, 2023 and Taylor County filed its rebuttal testimony on September 15, 2023. A hearing was held on October 26, 2023. A post-hearing procedural schedule was entered on October 30, 2023. Post-hearing data requests were filed and responded to

by Taylor County. The AG and Taylor County filed post-hearing briefs on November 29, 2023.

II. ARGUMENT

A. Taylor County's Proposed Increase to Electric Rates Increasing the Residential Customer Charge is Reasonable.

Taylor County hired Catalyst Consulting, LLC to conduct a comprehensive cost-of-service study ("COSS") to assist Taylor County in determining what the cost-based rates are and which customer classes were not paying their fair share of the cost to serve them. The COSS showed that the residential customer class was not paying anywhere near what the COSS showed it should be. The final COSS supported a customer charge of \$30.77 per month for the residential class, while the current charge is only \$10.22 per month. However, Taylor County did not propose to move to the full amount of the customer charge supported by the COSS, instead adopting the principle of gradualism that has been applied by the Commission in numerous rate proceedings. The COSS showed that except for Residential and the General Purpose Part 1, less than 50 KVA customer class, all of Taylor County's other rate classes are paying far more than the cost to serve them and are already heavily subsidizing the residential customer class.

The AG's brief in this matter ignores the COSS entirely. The AG discusses the local poverty rate and consumers' ability to pay, proposes a phased-in approach to a rate increase, and recommends allocating additional costs to customer classes that are already paying more than their fair share. None of these points contradict the findings of Taylor County's COSS. The AG did not perform its own COSS, or offer any critiques of Taylor County's COSS, or provide any evidence whatsoever that contravenes Taylor County's findings that (a) the residential class is paying far less than the cost to serve while other

classes are paying more than the cost to serve, and (b) the current residential customer charge covers only about a third of the actual fixed costs to serve residential customers – i.e., the current charge is \$10.22 per month but the cost to serve is \$30.77 per month. Taylor County proposed to increase that charge to \$16.84 – an amount that is still roughly just *half* of what it should be to cover actual costs – and yet the AG inexplicably finds this proposed increase to be insufficiently “gradual” and unreasonable.

A simple example demonstrates the unreasonableness of the AG position. If the cost to serve remained fixed at this \$30.77 per month level into the future, and Taylor County were to seek to shrink the gap between tariff rates and cost-based rates by the same percentage as the instant case (~32%) in future rate cases, and Taylor County filed a rate case every three years, then it would take 8 rate cases and 24 years before the customer charge reached the \$30.00 per month threshold. This assumes that the cooperative’s proposed rates are accepted with no reduction in every single case, and that those cases occur every three years – all of which are very aggressive assumptions. In reality it is likely to take much longer to even get close to the cost-based levels. If the cooperative filed every six years instead of every three, it would take half a century.

The AG claims that approving the customer charge for Residential Service creates an inequitable result for the General Purpose Service Part 1 because it shrinks the gap between the customer charges of the two classes. It is alarming that the AG opposes this “inequity” but is fine with recommending that cost increases be allocated to all of the rate classes instead of just residential, despite the fact that the undisputed COSS shows that the other classes are already paying more than their fair share. The AG’s recommendation will increase rates for large customers, which will have an adverse impact on commerce in the

service territory, which could be passed on to residential consumers anyway in the form of higher prices for products and services. The recommendation obviously also hinders economic development by making large commercial and industrial rates less competitive with other utilities not only in Kentucky but in other states. This hurts not only Taylor County but also the Commonwealth of Kentucky at large because it hinders the economic development attraction and expansion efforts spearheaded by the Governor and the Kentucky Cabinet for Economic Development. It is also simply patently unfair, is arbitrary, is unsupported, and should be rejected.

Taylor County is aware of the current economic challenges its members face and that no increase is ever welcomed by members. However, as the Commission has opined regularly, a cooperative has a duty to safeguard its financial integrity for the benefit of its members who are also its customers.¹ Taylor County informs its customers who are having difficulty paying their electric bills of all of the available assistance programs. Taylor County readily advises its members who express a need to contact assistance programs run

¹ See, e.g., In the Matter of the Application of South Kentucky Rural Elec. Coop. Corp. for A Certificate of Pub. Convenience & Necessity to Construct A New Headquarters Facility in Somerset, Kentucky, Order, Case No. 2008- 00371 (Ky. P.S.C. May 11, 2010) (“South Kentucky’s board of directors owes a fiduciary duty to its customers to safeguard the financial and operational viability of the cooperative. This fiduciary duty is heightened given the fact that South Kentucky’s customers are also the owners of the cooperative.”); In the Matter of the General Adjustment of Electric Rates of East Kentucky Power Cooperative, Inc., Order, Case No. 2006-00472, pp. 26-27 (Ky. P.S.C. Dec. 5, 2007):

Unlike an investor-owned utility where the equity owners of the utility may or may not also be customers of the utility, an RECC is governed and owned by its members, who are also its customers. While members of the 16-member systems have an interest in keeping their distribution cooperative’s rates as low as possible, they also have an interest in keeping their distribution cooperative’s equity position in EKPC viable. The directors of EKPC — who generally are also officers and directors of the 16-member systems — have an obligation to either seek an increase or decrease in EKPC’s base rates when the balance between low rates for end users and sufficiently high rates to keep EKPC viable falls out of equilibrium. Though there is a constant friction between these interests, it is one EKPC’s board members voluntarily undertake

by such agencies as the Lake Cumberland Community Services, Taylor County Crisis Relief, Salvation Army, and local churches. Taylor County works with these agencies regularly to ensure that its members can take advantage of these programs. As a standard practice, Taylor County also posts information to its social media platforms and ensures that its employees are educated in offering information about these programs to the members in need.²

Taylor County has among the lowest rates in Kentucky, which itself has some of the lowest rates in the country. This may sound desirable to some but in reality, it reflects an overemphasis on cost containment and the normalization of higher financial risk-taking. At some point, distribution cooperatives in Kentucky like Taylor County must begin to realistically move their rates toward cost-based rates. The time to start that movement is now and Taylor County has more than sufficiently provided evidence to support this. It is not some theoretical construct that can be achieved with tiny incremental rate adjustments; it is a real, practical objective that requires measurable increases in per-unit charges for residential members. The AG may wish to ignore the simple fact that providing electricity, especially to rural residents, comes at a cost, but that will not change the underlying facts – facts which are uncontroverted in this case. There are several ways to assist members who have difficulty paying those costs, but asking other members to increase their current levels of residential subsidization is not the answer. Taylor County’s Board of Directors understands this and was mindful of those challenges when it approved the proposed rate filing. Phased in rates and additional subsidization are not the answer. Taylor County hasn’t filed a base rate case in many years, and the correct solution to the current challenge

² See, Taylor County’s Response to the Attorney General’s First Request for Information (“AG’s First Request”) Item No. 2.

is for the cooperative to more routinely propose rate revisions while continuing to focus on providing safe and reliable electric service and reasonably managing its costs.

B. Taylor County's Other Electric Revenues

The AG is basically “cherry picking” what items to include from outside the test year. The AG argues that Taylor County should have included an additional \$110,000 in Other Electric Revenues. The AG argues that the 2022 amounts should be applied to this rate application. However, the AG fails to suggest that other adjustments to the rate application should be adjusted to 2022 numbers. This is inconsistent. The AG is picking and choosing only the items that will decrease the requested rate increase. The AG cannot choose the test year on which Taylor County elected to base its rate application and cannot cherry pick the adjustments they want to change to a different test year amount. This recommendation violates the matching principle and should be rejected.

C. Taylor County's Wages and Benefits Pro Forma Adjustment Is Reasonable and Should Be Accepted By The Commission

Taylor County's wages and benefits were very low when the new Chief Executive Officer, Jeff Williams, arrived at Taylor County. This has been noted throughout this case. It is again evident from Cooperative Finance Corporation's (“CFC”) Key Ratio Trend Analysis (“KRTA”) that wages and total expenses were extremely low at Taylor County.³ Ratio #108, Average Wage Rate Per Hour was 784th lowest out of 811 cooperatives.⁴ Mr. Williams had a salary study conducted, which was provided confidentially in response to Commission Staff's First Request for Information (“Staff's First Request”) Item 19. This

³ See, Taylor County's Response to the Attorney General's First Request for Information (“AG's First Request”) Item No. 27.

⁴ See, *id.* p. 18 of 24.

salary study, along with information obtained on lineman pay with other cooperatives in Kentucky, showed that Taylor County was severely underpaying of a large number of its employees. Taylor County had recently lost multiple first-class linemen due to pay.⁵ Taylor County's prior management had not come before the Commission to request a rate increase in more than a decade. In order for Taylor County to keep from requesting a rate increase, multiple items were left unchanged or spending on those items was decreased or cut out altogether.⁶ Taylor County is now having to adjust for those years that these items were not addressed. In order to keep skilled, qualified, reliable employees, Taylor County must pay a fair and reasonable wage to these employees. Taylor County has requested to include in rates an increase to its wages and salaries for its employees, but these increases are reasonable as documented throughout this case. Mr. Williams testified at the hearing in this matter regarding the level of pay that employees received prior to the increases given after his arrival and the amendment to the union contract and the efforts he undertook to evaluate the wages and benefits of Taylor County's employees.⁷ Mr. Williams awarded promotions to some employees, adjusting their salaries according to the promotions, and also provided merit increases to adjust the wages to a more competitive rate.⁸ It is also noteworthy that the AG made no recommendations in his direct testimony seeking any reduction in wages, for the CEO or for any other employees.

⁵ See, Direct Testimony of Jeff Williams, p.6, (June 6, 2023).

⁶ See, *id.* at 5.

⁷ H.V.T. 9:47:00-9:53:58.

⁸ See, Corrected Response to AG's First Request Item 102, (filed under seal Aug. 11, 2023); H.V.T. 10:02:40 – 10:10:27.

With regard to healthcare and 401k, these issues have been thoroughly discussed and supported throughout this case.⁹ Without relitigating these issues or the need for Taylor County to provide access to healthcare insurance for all employees, Taylor County balanced this need with Taylor County's workforce being 70% union employees,¹⁰ and the need to change wages and retirement to provide a more competitive compensation package for its employees. This balancing act has been fully documented in this case and was summarized in the rebuttal testimony of Mr. Williams. Even though the percentage of contributions increased in the 401k plan, it is Taylor County's position that it is still much cheaper than the R&S plans still offered by some Kentucky cooperatives. In addition, the contribution is based on only regular pay where the prior contribution percentage was on total wages, including overtime pay. The healthcare is much less costly than the former healthcare plan and now employees pay a portion of their coverage (up to 12% in 2025).¹¹ The savings the new healthcare plan brought in comparison to the 401k increase is documented in the rebuttal of Mr. Williams.¹² The AG continues to misconstrue or ignore valid facts and value in Taylor County's arguments. These benefit and pay changes were well thought out adjustments in a very challenging environment that have succeeded in retaining employees, paying them fairly and getting both the union and non-union employees to agree to a new medical insurance plan that not only provides increased coverage for the employees, but saves Taylor County money now and in the future.

⁹ See, Taylor County's Response to the Attorney General's Second Request for Information ("AG's Second Request") Item 36; Rebuttal Testimony of Jeff Williams, pp. 3- (Sept. 15, 2023) ("Williams Rebuttal");

¹⁰ See, Williams Direct p. 6.

¹¹ See, Williams Rebuttal, p.4; Direct Testimony of Patsy Walters, pp. 8-9 (June 6, 2023).

¹² See, *id.* p. 5.

D. Taylor County's Proposed Board of Directors' Expenses

Taylor County's Board of Directors' expenses are reasonable. The Board of Directors are tasked with making decisions on behalf of the cooperative. These decisions include the finances of the cooperative and involve reviewing and signing loan documents for millions of dollars. Although the AG stated in its brief that the monthly board meetings usually last two-hours,¹³ the monthly board meetings are not the only work performed by the Board of Directors. The Directors receive phone calls from members, have ad hoc discussions with members, review documents and information prior to each of the board meetings, and attend outside meetings on behalf of Taylor County. The AG compares the amount paid to the Board of Directors to the average pay of someone making minimum wage and working a forty-hour work week.¹⁴ The average minimum wage employee is not tasked with making decisions that will affect the entire service territory of its employer, nor are they tasked with signing loan documents involving millions of dollars. The AG's comparison is apples-to-oranges and should be rejected by the Commission in this instance.

E. Taylor County's Right of Way Expenses

Taylor County is requesting a large increase to its right-of-way ("ROW") expenses. Under the prior management, Taylor County had basically halted all ROW efforts and was only cutting or trimming when an incident occurred, and vegetation had to be removed to get service restored. The ROW program was basically non-existent immediately prior to Mr. Williams' arrival at Taylor County. In order to provide safe and reliable service to its members, Taylor County can no longer neglect its ROW trimming efforts. In 2023, Taylor

¹³ See, AG's Brief, p. 13.

¹⁴ See, *id.*

County used equity to pay for 617.19 miles of its ROW to be trimmed. Taylor County did not request to recover this amount that was spent on ROW in 2023 in this proceeding. That is an amount of \$3,604,012, that Taylor County is spending on its ROW program, that will not be recovered by Taylor County. Due to the length of time that some circuits have not been cut, the cost to cut and maintain these circuits is even more. Taylor County's members have received the benefit of paying very low rates for electric service for decades due to the decrease in spending in multiple areas of the cooperative's business. However, the system must be maintained in order to continue to provide safe and reliable service to its members. The ROW efforts must increase in order to provide the appropriate reliability of Taylor County's service.

Mr. Williams testified at the hearing that he did not have time when he first came on board at Taylor County to reach out to any of his sister cooperatives when doing ROW bidding. He also testified that he would not be opposed to contacting them to see if this could be beneficial to Taylor County. However, different cooperatives have different service areas. Neither Taylor County nor any other cooperative would want to subsidize the ROW clearing of another cooperative. Due to the terrains of different circuits, the cost per mile for Taylor County could increase if it bids with another cooperative whose terrain is more difficult to access and trim than Taylor County's and vice versa. Furthermore, the limited number of contractors that currently bid on ROW contracts is low. Spreading these contractors out over more territory will increase the time it takes to get ROW cleared. The AG also makes the argument that Taylor County should coordinate with the Department of Transportation in tree-trimming efforts. Taylor County may explore this option in the future, but at present has no evidence that doing so will yield increased reliability at lower

costs, since distribution right-of-way and highway right-of-way requiring vegetation management are not necessarily strongly correlated.

F. Taylor County's Legal Expenses

Taylor County's legal expenses included in this proceeding are fair, just, and reasonable. Taylor County's current CEO and Board of Directors made the decision to have legal counsel present at each of the board meetings and to have the ability to contact legal counsel when needed outside of the scheduled board meetings. Prior to Mr. Williams' arrival, legal counsel did not regularly attend the board meetings. Taylor County's CEO and Board of Directors have taken this step to assist them in making decisions that are best for the cooperative and are aligned with the regulatory requirements of the cooperative. Taylor County also engaged outside counsel to assist in the amendment of the union contract and will continue to hire outside counsel to assist in union negotiations. Taylor County has many items to address in the upcoming years and will need the assistance of legal counsel to appropriately address these items. The AG provides no evidence that the legal expense amounts are unreasonable.

The AG recommends a five-year average on legal expenses. However, the AG does not propose to use a five-year average on any other expenses. Again, the AG is cherry picking on which expenses will lower the requested increase. The AG offers no evidence to show that the test year amount is unreasonable. For these reasons the Commission should reject the AG's recommendations regarding legal expenses.

G. Taylor County's Income From All Sources

The AG argues that Taylor County's proposal to base the requested increase on a 1.85 OTIER instead of 2.00 TIER eliminates the non-operating margins income from the

calculation and requests the Commission to include all non-operating margins income when calculating the revenue requirement. The AG is requesting to include these items so it will lower the requested increase. However, if that is required in this proceeding, the converse would also have to be applied when the non-operating margins are not net income but instead represent a net loss. The non-operating margin income is not comprised of actual dollars the cooperative can use to operate and pay bills, but instead is mostly entries on its books like patronage capital. If these amounts are included now, then the Commission should also have to include these amounts, if these items result in a loss to the cooperative in future filings. This would set a precedent for future rate filings for cooperatives to be able to include those losses as well.

H. Taylor County's Credit Card Processing Fees

The AG's argument on credit card processing fees is flawed. The AG states that "Taylor County RECC needs to address the significant increase in credit card processing fees."¹⁵ However, as testified to by Ms. Patsy Walters at the hearing, the processing fees themselves are not increasing; the number of members who are using credit cards to pay their electric bill is increasing.¹⁶ As more members pay their bills with credit cards, the total amount of credit card fees increase. Since so many of Taylor County's members are now using credit cards to pay their electric bills, it is an expense that is appropriate for Taylor County to spread to all members and not pass on to the individual member. In addition, a fee is not charged to members who pay in person with cash, who pay with a check or a money order; those costs are similarly spread to the classes at large. Any costs

¹⁵ See, AG's Brief p. 17.

¹⁶ See, H.V.T. 12:00:35 – 12:01:20.

associated with these forms of payments, except a returned check charge, is shared by all members and not assigned to the individual member. The Commission has recently found that “card processing fees should not be removed from base rates because there are costs to all payment processing methods and passing through the costs for one specific payment could have unintended consequences on late and returned payments.”¹⁷ Credit card payments also assist Taylor County in collecting payments on time and without the hassle of waiting for a check to clear or the efforts that have to be undertaken if the check does not clear, so it is appropriate to treat them as a reasonably-incurred cost included in rates.

I. Taylor County Requires a 1.85 OTIER to Continue to Provide Safe Reliable Service

At the hearing in this matter, Mr. Williams testified regarding the importance of the OTIER calculation.¹⁸ The OTIER calculation looks at the operating margins of the Cooperative. Many times, a cooperative such as Taylor County may meet its TIER obligations due to non-utility income received from other sources, such as interest income and G&T patronage capital allocations but will not meet its obligations of OTIER which is the operating margin of the cooperative.¹⁹ The amounts that are included in the TIER calculation are not necessarily dollars that the cooperative has to actually operate the cooperative, but are instead entries on the books. There is no support in the record for basing margins on any OTIER lower than 1.85.

J. Taylor County’s Rate Case Expense is Reasonable

¹⁷ See, *In the Matter of: Electronic Application of Farmers Rural Electric Cooperative Corporation for a General Adjustment of Rates Pursuant to Streamlined Procedure Pilot Program Established in Case No. 2018-00407*, Case No. 2023-00158, Order p.12 (Ky. P.S.C. Oct. 3, 2023).

¹⁸ H.V.T. 11:16:00-11:17:10

¹⁹ *Id.* at 11:17:03-11:17:10.

Taylor County included an estimate of rate case expense to be amortized over a three-year period, which is consistent with prior Commission cases. The AG argues that the rate case expense should be amortized over a five-year period because it has been more than a decade since Taylor County's last rate case. Taylor County's current CEO and Board of Directors see the importance of more frequent, smaller rate increases and do not plan on waiting this long between rate cases. Because of the Commission's long-standing practice, the three-year amortization period proposed by Taylor County is reasonable and should be approved by the Commission.

In addition, the AG argues that no costs associated with the cancelled September 26, 2023 hearing should be included in the rate case expense. This argument is theoretically flawed because legal expenses are not included or excluded based on any arbitrary decision about what standards of performance or outcome must be met in order for the costs to be considered legitimate. Regardless of this fact, counsel did not charge for drafting the motion for deviation, efforts in getting customer notice published or advertised on the radio, or for traveling or attending the public comment session on September 26, 2023. Taylor County also did not include the costs for the radio or newspaper advertising that was given for the September 26, 2023 hearing. Although Taylor County believes it could have included these costs as a rate case expense, and been charged for these amounts by counsel, these amounts were not included.

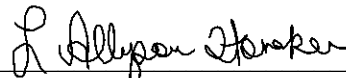
III. CONCLUSION

Taylor County has proposed fair, just, and reasonable rates in this proceeding that are supported by a fully allocated COSS. The COSS supports an increase to the residential class alone and in particular to the residential customer charge. The pro forma adjustments

that have been proposed by Taylor County in this proceeding are known and measurable and should be approved by the Commission. The AG's recommendations ignore the COSS and otherwise arbitrarily reduce Taylor County's request in a way that is unsupported and unreasonable; they should be rejected by the Commission. Taylor County's management, over the past year, has been able to prioritize issues that needed to be addressed, that had not been addressed for far too long. Taylor County has been able to begin moving its employees' compensation towards the average, get a better health insurance plan for the employees while saving the cooperative money and phasing in an employee contribution to reach 12% in 2025. Receiving the RUS funding will allow Taylor County to pay off short-term debt, which has higher interest rates, which will in turn save the cooperative money. Taylor County is diligently working to improve its financial position, increase employee morale, retain valued employees, and improve the safety and reliability of its system. In order to continue to provide safe and reliable service, Taylor County requests the proposed rates, as revised in the rebuttal testimony, be approved by the Commission.

This 13th day of December, 2023.

Respectfully submitted,



L. Allyson Honaker
Brittany H. Koenig
HONAKER LAW OFFICE, PLLC
1795 Alysheba Way, Suite 6202
Lexington, KY 40509
(859) 368-8803
allyson@hloky.com
brittany@hloky.com

Counsel for Taylor County RECC

CERTIFICATE OF SERVICE

This is to certify that the electronic filing was transmitted to the Commission on December 13, 2023 and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085 no paper copies of this filing will be made.



Counsel for Taylor County RECC